



October 13, 2017

The Honorable Jocelyn Boyd  
Chief Clerk and Administrator  
Public Service Commission of South Carolina  
101 Executive Center Drive  
Columbia, South Carolina 29201

**Re:** Friends of the Earth and Sierra Club, Complainant/Petitioner v. South Carolina  
Electric & Gas Company, Defendant/Respondent  
Docket No. 2017-207-E

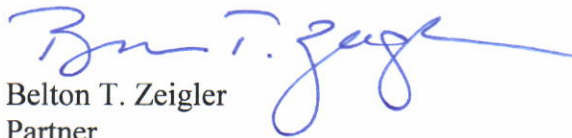
Dear Ms. Boyd:

Attached for filing please find SCE&G's Petition for Rehearing and Reconsideration of  
Order No. 2017-637 for the matter cited above.

If you have any questions regarding these matters, please do not hesitate to contact me.

Sincerely,

**WOMBLE CARLYLE SANDRIDGE & RICE**  
*A Limited Liability Partnership*

  
Belton T. Zeigler  
Partner

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STATE OF SOUTH CAROLINA

## (Caption of Case)

Friends of the Earth and Sierra Club, Complainant/  
 Petitioner v. South Carolina Electric & Gas Company,  
 Defendant/Respondent

BEFORE THE  
 PUBLIC SERVICE COMMISSION  
 OF SOUTH CAROLINA

## COVER SHEET

DOCKET

NUMBER: 2017 - 207 - E

(Please type or print)

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

## DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☐ Other: \_\_\_\_\_

## INDUSTRY (Check one)

## NATURE OF ACTION (Check all that apply)

☒ Electric☐ Affidavit☐ Letter☐ Request☐ Electric/Gas☐ Agreement☐ Memorandum☐ Request for Certification☐ Electric/Telecommunications☐ Answer☐ Motion☐ Request for Investigation☐ Electric/Water☐ Appellate Review☐ Objection☐ Resale Agreement☐ Electric/Water/Telecom.☐ Application☒ Petition☐ Resale Amendment☐ Electric/Water/Sewer☐ Brief☒ Petition for Reconsideration☐ Reservation Letter☐ Gas☐ Certificate☐ Petition for Rulemaking☐ Response☐ Railroad☐ Comments☐ Petition for Rule to Show Cause☐ Response to Discovery☐ Sewer☐ Complaint☐ Petition to Intervene☐ Return to Petition☐ Telecommunications☐ Consent Order☐ Petition to Intervene Out of Time☐ Stipulation☐ Transportation☐ Discovery☐ Prefiled Testimony☐ Subpoena☐ Water☐ Exhibit☐ Promotion☐ Tariff☐ Water/Sewer☐ Expedited Consideration☐ Proposed Order☐ Other: \_\_\_\_\_☐ Administrative Matter☐ Interconnection Agreement☐ Protest☐ Other: \_\_\_\_\_☐ Interconnection Amendment☐ Publisher's Affidavit☐ Late-Filed Exhibit☐ Report

Print Form

Reset Form

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Friends of the Earth and Sierra Club, )  
Complainant/Petitioner v. South Carolina )  
Electric & Gas Company, )  
Defendant/Respondent )

## INTRODUCTION

The matters arising out of the abandoned nuclear project are of extraordinary public importance. Litigating them in multiple overlapping and legally inconsistent dockets would invite confusion, delay, procedural disputes and the potential for unnecessary procedural error. All parties share an interest in the orderly, timely and efficient decision of the matters arising out of the abandonment of the nuclear project. Proceeding with discovery in Docket No. 2017-207-E would not serve that goal.

**Granting rehearing and reconsideration is proper because:**

1. The principal claim for relief in this matter – seeking an order halting construction spending – is now moot.
2. The second claim for relief in this matter – seeking an order for reparations and refunds – is expressly barred by the language of the sole statute under which any

relief is requested in this matter and by directly applicable South Carolina Supreme Court opinions. The legally defective nature of this matter has been conclusively shown in SCE&G's Motion to Dismiss dated July 17, 2017, and supporting documentation, previously filed in this docket, which is incorporated herein by reference.

3. SCE&G's Motion to Dismiss has now been pending for approximately 90 days and the claims it raises should be granted as a matter of law. The proper course of action here would be to schedule that Motion to Dismiss for hearing, allow the parties who have intervened in the interim an opportunity to file briefs, and decide the motion before withdrawing the order staying discovery. There is no logic in allowing discovery in this docket to proceed prior to SCE&G's Motion to Dismiss being heard, considered, and ruled upon.
4. Allowing discovery to proceed in this statutorily unauthorized and legally unsustainable proceeding will result in an unnecessary duplication of efforts and a waste of judicial resources. This would be directly contrary to the Commission's policy, as stated in the Order, of "secur[ing] a just, speedy and inexpensive determination in every action," and conserving judicial resources.
5. No discovery is necessary or should be permitted for resolution of the purely legal issues raised in SCE&G's Motion to Dismiss.
6. Out of respect for the legislative inquiry into the abandonment decision, SCE&G voluntarily withdrew its Petition, dated August 1, 2017, in Docket 2017-244-E. This petition sought a comprehensive review by the Commission of the regulatory matters arising out of the abandonment. SCE&G has consistently maintained, and

here reaffirms, that it will need to file a petition to comprehensively address the abandonment-related issues such as those that were raised in Docket 2017-244-E. SCE&G intends to make such a filing in the future at the appropriate time. SCE&G would expect the Complainants to seek to intervene in that docket and raise any issues that they may properly raise related to these matters and conduct any discovery that may be legally authorized and appropriate. Thus, allowing discovery to proceed in this docket would multiply proceedings unnecessarily and would waste judicial resources without benefit to any party, and could lead to confusion and procedural difficulties.

The facts underlying these grounds for rehearing and reconsideration are procedural matters which are matters of public record in this docket, and in Docket No. 2017-305-E and Docket No. 2017-244-E. SCE&G also incorporates here the issues and arguments contained in SCE&G's Response to the Commission's Request in Order No. 2017-637 for Briefing Concerning Coordination of Dockets of contemporaneous date.

#### **ISSUES WITH THE DISCOVERY ITSELF**

Even assuming that Friends of the Earth and Sierra Club are permitted to seek discovery from SCE&G, the discovery requests that they have served on SCE&G are not enforceable, as written, because they grossly exceed the scope of permissible discovery pursuant to the South Carolina Rules of Civil Procedure and Chapter 103, Article 8 of the South Carolina Code of Regulations in a number of ways. For example, the discovery that Friends of the Earth and Sierra Club filed on July 7, 2017, seek all documents relating to any communications between SCE&G and: (a) Westinghouse Electric Company, LLC and its affiliated entities; (b) Toshiba Corporation; (c) the South Carolina Public Service Authority; and/or (d) ORS regarding the V.C.

Summer Nuclear Station. Such a request is, on its face, overly broad, unduly burdensome, not proportional to the needs of this case, and not limited to the relevant issues.

If Friends of the Earth and Sierra Club are permitted to proceed with discovery at this point, SCE&G will object to and contest those discovery requests to the extent they exceed the scope of SCE&G's discovery obligations at law. This raises the prospect of further delay and waste of judicial resources through protracted discovery disputes in a docket which is legally flawed and which by all rights should not survive the outstanding Motion to Dismiss.

### **CONCLUSION**

In Order No. 2017-637, the Commission affirmed its policy of promoting judicial economy, providing a just, speedy, and inexpensive determination in every action, and avoiding unnecessary or duplicative proceedings. For the reasons stated above, all these interests would be furthered by granting rehearing and reconsideration of Order No. 2017-637.

### **RELIEF REQUESTED**

Therefore, SCE&G respectfully requests that the Commission grant rehearing and reconsideration of Order No. 2017-637. After rehearing and reconsideration, SCE&G requests that the Commission withdraw Order No. 2017-637 and issue an order to:

1. Reinstatement of the stay on discovery and further proceeding contained in Order No. 2017-493 until the Motion to Dismiss in this matter is fully briefed by all parties, heard and decided;
2. Schedule, hear, and thereafter grant SCE&G's Motion to Dismiss in this matter; and,
3. Grant such other relief as may be warranted in the premises.

Or in the alternative to items 1 and 2 immediately above,

4. Reinstatement of the stay on discovery and further proceedings in this matter and indicating that the Motion to Dismiss will be taken up after the dispositive motions in Docket 2017-305-E are resolved and after SCE&G files a subsequent petition for Commission review of its abandonment decision.

Respectfully submitted,



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Cayce, South Carolina  
October 13, 2017

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2017-207-E**

**IN RE:**

Friends of the Earth and Sierra Club, )  
Complainant/Petitioner v. South Carolina )  
Electric & Gas Company, )  
Defendant/Respondent )

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one copy of SCE&G's Petition for Rehearing and Reconsideration of Order No. 2017-637 to the persons named below at the addresses set forth via U.S. First Class Mail and electronic mail:

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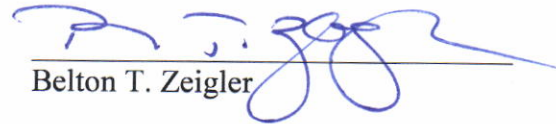


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